Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Amendments of Parts 32, 36, 61	)	RM 8221
64, and 69 of the Commission's	)	
Rules to Establish and Implement	)	
Regulatory Procedures for Video	)	
Dialtone Service	)	

GTE's REPLY COMMENTS

GTE Service Corporation and
its affiliated domestic
telephone operating companies

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June 7, 1993

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SUMMARY

GTE and many other parties urge the Commission to deny the Petition and proceed with implementation of its video dialtone policy without delay.

GTE has not deployed video transport facilities without compliance with Section 214 and Commission policy. There has been no improper allocation of costs between video and telephone service with respect to either GTE's Cerritos experiment or Contel of California's Rancho Las Flores proposed system.

GTE urges the Commission to develop and apply a balanced and complete regulatory system governing both telephone companies and cable television firms so as to promote competition and protect ratepayers, while imposing unreasonable burdens

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GTE's REPLY COMMENTS

GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE") offer their reply comments in response to filed comments pertaining to the Commission's Public Notice[1] on a Petition for Rulemaking ("Petition") jointly filed April 8, 1993 by the Consumer Federation of America ("CFA") and the National Cable Television Association ("NCTA") (collectively "Petitioners").

BACKGROUND

The Petition requests an effective suspension of the policy created by the *Video Dialtone Order.*[2] It asks the Commission: (i) to commence a rulemaking to establish separations, cost accounting and cost allocation rules for video dialtone service furnished by telephone companies, (ii) to establish a Federal-State Joint Board to

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1 Pleading Cycle Established for Joint Petition of CFA and NCTA for Rulemaking and Request for Establishment of a Joint Board, Public Notice, DA 93-463, April 21, 1993.

2 *Telephone Company/Cable Television Cross-Ownership Rules, Sections 63.54-63.58*, CC Docket No. 87-266 ("D.87-266"), Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd. 5781 (1992) ("*Video Dialtone Order*"), *petitions for reconsideration pending.*

recommend procedures for separating the cost of local telephone company plant that is used jointly to provide telephone service and video dialtone, and (iii) meanwhile, to suspend acceptance or processing of all video dialtone applications.

DISCUSSION

1. GTE continues to urge the Commission to proceed with implementation of its video dialtone policy without delay.

GTE's comments point out Petitioners are asking for the same set of issues to be considered in numerous, duplicative proceedings, and for a complete paralysis of the video dialtone process while these proceedings are under way. Arguments offered by Petitioners have been previously considered by the Commission, and are being further considered in ongoing proceedings. The Commission's video dialtone policy is both constructive and forward-looking and its implementation should proceed without delay.

Many commenting parties agree with GTE that Petitioners have made no showing whatever of reasons that would support Commission action holding all pending video dialtone applications in abeyance and refusing new applications. Pacific Bell and Nevada Bell ("Pacific") (at 2) urge the Commission to categorically reject any suggestion to delay its review and approval of pending or to refuse new video dialtone applications. Southern New England Telephone Company ("SNET") (at 4) says, whether the Commission undertakes the rulemaking proceedings requested or not, the Commission should not hold in abeyance any duly filed Section 214 applications for video dialtone service. Ameritech (at 4) maintains that, since Section 214 approval is a prerequisite to video dialtone provision, Petitioners' action in suggesting that the FCC cease consideration of such applications is a "blatantly anti-competitive tactic to keep [telephone companies] out of the video marketplace."

Comments of the World Institute on Disability, The Consumer Interest Research Institute, Henry Geller, and Barbara O'Connor (hereafter collectively referred to as the "Joint Commenters") (at 3) express valid concern that the rulemaking requested will unnecessarily delay the implementation of the Commission's video dialtone rules. They refer (*id.*) to NCTA's financial interest in creating such delay and accurately observe that video dialtone applications pending before the FCC hold the promise of fostering competition in the delivery of video services. Further, they conclude (at 4) that placing a moratorium of indefinite duration on Commission action on video dialtone applications would deny consumers the benefits of competition and would not be in harmony with the Commission's desire to foster competition in the cable industry.

After reviewing the filed comments, GTE offers the same recommendations. No new evidence has been offered; no logic has been presented that would justify a rulemaking or establishment of a Federal-State Joint Board.

In summary: A number of parties suggest that the Commission has wisely adopted a constructive and forward-looking policy; and that the FCC should proceed to implement that policy without delay.

2. GTE has not deployed video transport facilities without compliance with Section 214 and Commission policy.

The New Jersey Cable Television Association, Inc. ("NJCTA") (at 4-5) charges that telephone company video transport facilities have been developed and deployed without regard to Commission review under Section 214 of the Communications Act and without adherence to Commission policy. In particular, they relate GTE's petition for reconsideration of the Commission's *Video Dialtone Order* and GTE's tariff filing for Videoband-Type II video transport services,[3] and claim this indicates unauthorized deployment of video transport facilities.

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[3] Tariff Transmittal No. 745, revising GTOC Tariff F.C.C. No. 1.

GTE's tariff filing is not in any way related to the deployment of channel service or video dialtone service. As stated in its reply to opposition to its tariff filing,[4] no Section 214 authorization is required to furnish Videoband-Type II service. Existing rules do require a telephone company to seek Section 214 authorization for facilities to provide channel service or video dialtone service, but GTE's tariff proposed no such service.

GTE's tariff proposed video transport similar to other transport services provided under tariff by GTE except that the proposed service was a **video grade** service. No separate Section 214 authorization has ever been required for such transport service. This position was evidently accepted by the FCC's Staff. After review of the tariff and associated submissions, the Common Carrier Bureau concluded that "no compelling argument has been presented that the tariff revisions are so patently unlawful as to require rejection, and . . . an investigation is not warranted at this time."[5]

In summary: GTE has not deployed facilities without compliance with Section 214 or Commission policy.

3. There has been no improper allocation of costs between video and telephone service with respect to either GTE's Cerritos experiment or Contel of California's Rancho Las Flores proposed system.

California Cable Television Association ("CCTA") (at 2-3) states that it has raised the issue of proper cost allocation between video and telephone service in numerous contexts. CCTA cites GTE's Cerritos experiment and Contel of California's proposal to construct a combined telephone and cable television system at Rancho Las Flores as

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[4] GTE Reply, *In the Matter of GTE Telephone Operating Companies Tariff FCC No. 1*, filed November 6, 1992.

[5] Order, *In the Matter of GTE Operating Companies, Revisions to Tariff F.C.C. No. 1*, 8 FCC Rcd 475 (1993) (Deputy Chief (Policy), Common Carrier Bureau).

supposed examples of improper cost allocation that demonstrate the potential for cross-subsidy of cable television service.

Contel of California never constructed the system at Rancho Las Flores inasmuch as the planned new community was never built, and as a consequence there has never been plant investment in the Rancho Las Flores project. Contel of California in 1992 asked the FCC to hold its Section 214 application in abeyance.

The allegations directed at GTE's Cerritos testbed are even further off the mark. In conformity with conditions imposed by the FCC, all of the facilities and costs involved in the Cerritos testbed represent non-regulated, below-the-line cost and investment; this investment has never been included in GTE's regulated operation or rate base. GTE has acted throughout in compliance with the conditions imposed on the Cerritos project, specifically "that no costs for the construction or operation of any Cerritos cable system, including lease payments by GTE, may appear in any ... rate base [of General Telephone Company of California] or as an operating expense, absent prior authority from the Commission."[6]

Existing processes are adequate to address the issue of cross-subsidy of cable television service by telephone ratepayers. The Cerritos testbed, as well as the Bell Atlantic video dialtone application approved earlier this year, demonstrates that the Commission has the means to address effectively potential cross-subsidy issues.

In summary: No improper allocation of costs between video and telephone service has ever occurred with respect to either GTE's Cerritos experiment or Contel of California's Rancho Las Flores proposed system.

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6 *General Telephone Company of California*, 4 FCC Rcd 5693, 5700 (1989), *remanded sub nom.* National Cable Television Association v. FCC, 914 F.2d 285 (D.C. Cir. 1991).

4. The FCC should apply a balanced and complete regulatory system that recognizes the convergence of cable and telephone technology and governs both telephone companies and cable television firms.

The Joint Commenters (at 8) offer the very perceptive observation that "[n]ew policies ... should open up new regulatory horizons and provide the incentives that are needed to allow all Americans to enjoy the benefits of a broadband telecommunications network." The key to these new policies should be recognition that the cable television and telephone industries are converging, and that this requires a coherent and consistent approach to regulation. Insisting that telephone companies might place on telephone ratepayers costs associated with constructing cable systems, NCTA calls for ever-increasing regulatory burdens on telephone companies. However, there are in place for telephone companies a great range of carefully constructed protections for the public ranging from a completely revised Uniform System of Accounts to cost allocation rules to detailed review of each service offering.[7] And yet cable companies -- until recently, subject to no restrictions whatever -- are able to drop on cable customers costs associated with their entry into the telephone business. Surely any regulatory approach focused on the protection of the public should address these two sets of very similar risks in a consistent way.

U S WEST (at 2) addresses this important issue: "With cable providers entering telecommunications markets and telephone companies entering video service markets, it is more and more difficult to rationalize totally different regulatory regimes for telephone companies and cable companies." Ameritech (at 8), expressing a similar view, suggests the Petitioners are attempting to draw boxes around facilities by using the old paradigm of telephony versus broadcast entertainment. Ameritech (*id.*)

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[7] Many commenting parties assert existing rules and safeguards are adequate and describe in great detail the mechanisms that exist to address the issues raised by the Petitioners. GTE at 4-8, Pacific at 3-5, SNET at 3 and 8-10, USTA at 3-7, NYNEX at 8-15, Bell Atlantic at 3 and 10-14, BellSouth at 9, 12, and 14, Ameritech at 6-11, and U S WEST at 11-13.

concludes: "The distinction from a network or technology standpoint no longer has merit."

Bell Atlantic (at 12-14) stresses that cable companies are subject to none of the [redacted]

Petition would defeat this objective by holding the Commission's video dialtone initiative in a state of indefinite suspension, thereby imposing immense obstacles to the creation of a nationwide broadband network.

GTE suggests that Congress has now decided cable television customers have to be protected from unreasonable rates as well as telephone customers. The Commission's objective should be to develop a set of rules that will govern both video and telephone providers.

In summary: GTE urges the Commission to develop and apply a balanced and complete regulatory system governing both telephone companies and cable television firms so as to promote competition and protect ratepayers, while imposing unreasonable burdens on neither cable television firms nor telephone companies.

Respectfully submitted,

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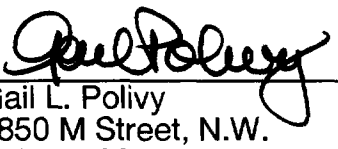

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June 7, 1993

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "GTE's Reply Comments" have been mailed by first class United States mail, postage prepaid, on this 7th day of June, 1993 to all parties of record.

Ann D. Berkowitz